Supreme Court No. 80115-1

**THE SUPREME COURT**
**OF THE STATE OF WASHINGTON**



THURSTON COUNTY,
Petitioner,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD and FUTUREWISE
(formerly known as 1000 Friends of Washington),
Respondents,

&

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, OLYMPIA MASTER BUILDERS, and PEOPLE FOR RESPONSIBLE ENVIRONMENTAL POLICIES,
Petitioner-Intervenors.



**FUTUREWISE'S**
**ANSWER TO THURSTON COUNTY'S PETITION FOR DISCRETIONARY REVIEW**

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## I. Introduction

For the second time Thurston County petitions the Supreme Court to review the decisions in this case. As this answer will show, the Supreme Court's earlier decision declining to review this case was correct.[1] The Supreme Court should deny the petition for discretionary review since it does not meet the criteria in RAP 13.4(b). The Court of Appeals decision is not in conflict with any other decisions of the Court of Appeals or the Supreme Court. Further, because of the facts that underlie the Board and Court decisions, this petition does not raise an issue of substantial public interest that should be determined by the Supreme Court. The facts of this case are too specific to provide the guidance for other cities and counties that Thurston County argues is needed. Any guidance that can be derived from this appeal is provided by the published and well reasoned decision of the Court of Appeals.

The Growth Management Act (GMA) relies on the citizenry, such as Futurewise, to enforce the policy decisions of the Legislature and Governor.[2] For this reason Futurewise is a respondent in this appeal

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[1] *Thurston County v. Western Washington Growth Management Hearings Board and 1000 Friends of Washington*, No. 78148-6 (C/A No. 34172-7-II) Order (Department I of the Supreme Court of Washington: September 6, 2006). Attached as Appendix 1.

[2] *See King County v. Central Puget Sound Growth Management Hearings Bd.*, 138 Wn.2d 161, 175 – 77, 979 P.2d 374, 380 – 82 (1999).

defending the decisions of the Western Washington Growth Management Hearings Board (Board) and the Court of Appeals.

## II. Statement of the Case

Urban growth areas (UGAs) are designated to provide for the higher density uses characteristic of cities and towns. The County is required to designate UGAs "based upon" the Office of Financial Management's 20-year population projection range for the county.[3]

The Thurston County Comprehensive Plan identifies a 2025 residential land demand for the UGA of 11,583 acres.[4] The plan also shows a residential land supply of 18,790 acres. The difference between supply and demand, the land that is not needed to accommodate the 2025 growth target, is 7,207 acres. This oversupply is 62 percent of the land needed to accommodate the projected 2025 population growth.

For commercial uses, the UGAs have 5,242 acres of available land and a 2025 demand of 1,889 acres.[5] This results in an oversupply of 3,353 acres or 177.5 percent. For industrial uses, the UGAs have 4,712

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[3] RCW 36.70A.110(1).
[4] *Thurston County Comprehensive Plan* Land Use Chapter pp. 2-11 – 2-12, AR 16 pp. 000380 – 81. Hereinafter Land Use Chapter.
[5] Thurston Regional Planning Council, *Buildable Land Report for Thurston County,* Table 13, 2000 Land Supply compared to 2025 Land Demand, Thurston County p.II-37 (September 2002) AR 37 p. 002410.

acres of available land and a 2025 demand of 325 acres.[6] This results in an oversupply of 4,387 acres or 1,349.8 percent.

The GMA allows an increase in the land within the UGA through the use of a "reasonable" market factor, which is a percentage of the developable land within the UGA estimated to unavailable for development over the 20-year planning period. At the hearing before the Board, Thurston County admitted it did not use a market factor in sizing the UGAs.[7]

Rural areas are the lands that remain after urban growth areas and resource lands (agricultural, forest, and mineral resource lands of long-term commercial significance) are designated.[8] Rural areas must have rural, not urban, building densities. Limited areas of more intense rural development (LAMIRD) may allow higher densities, but these densities are defined as rural densities too when within a LAMIRD.[9] A LAMIRD is a part of the rural area with an existing built environment that is more concentrated than otherwise found in a rural area.[10] LAMIRDs are

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[6] *Id.*
[7] Report of Proceedings (RP) (The transcript of the Hearing on the Merits before the Board) p. 159.
[8] RCW 36.70A.070(5); *Whidbey Environmental Action Network v. Island County*, 122 Wn. App. 156, 166, 93 P.3d 885, 890 (2004).
[9] RCW 36.70A.030(18).
[10] RCW 36.70A.070(5)(d); (e).

optional.[11] Despite never designating a single limited area of more intense rural development (LAMIRD), the Thurston County comprehensive plan designates 21,939 acres of rural land for densities equal to or greater than one dwelling unit per two acres.[12]

The County conceded at oral argument before the Board that densities greater than one dwelling unit per five acres are not rural densities unless they are part of a LAMIRD.[13] In part due to this high density zoning, the average net density for new rural development in Thurston County was one dwelling unit per 3.13 acres from 1996 to 2000.[14]

The County also claims the Court of Appeals erred in finding that the County fails to provide a variety of rural densities. However, excluding the comprehensive plan designations the county concedes violate the GMA leaves only two rural comprehensive plan designations. Both designations have a density of one dwelling unit per five acres.[15]

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[11] RCW 36.70A.070(5)(d); *Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Bd.*, 113 Wn. App. 615, 625 – 26 53 P.3d 1011, 1016 (2002).
[12] Thurston County Resolution No. 13234 Finding 23 p. 8, AR 1 p. 000013; Land Use Chapter Table 2-1A Percentage of Land Allocated for Rural Uses pp. 2-18 – 2-19, AR 16 pp. 000387 – 88.
[13] *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___ Wn. App. ___, 154 P.3d 959, 972 (2007) *citing* RP at 98-99.
[14] Land Use Chapter at p. 2-12, AR 16 p. 000381.
[15] Land Use Chapter at pp. 2-22 – 2-23, AR 16 pp. 000391 – 92.

The County claims that rural density variety is increased by natural resource lands interspersed throughout its rural areas. However the County's zoning map shows this is not true. The natural resource lands are principally located east of the combined Olympia, Tumwater, Lacey UGA and south and west of the rural areas.[16] Thus, they do not provide a variety of rural densities within or near most rural areas.

## III. Argument

### A. Thurston County's petition does not involve an issue of substantial public interest that should be determined by the Supreme Court.

#### 1. An appeal of a decision to review and revise under RCW 36.70A.130's seven and ten year periodic reviews must be filed within 60 days of the notice of adoption for that decision and the seven and ten year time frames provide for regulatory certainty. (Thurston County Issue 1)

Futurewise filed a timely petition for review of the county's decisions to review and revise its comprehensive plan. Thurston County argues that Board and Court of Appeals decisions effectively nullify the GMA's requirement to file a petition for review within 60 days of the date that notice of adoption is published by allowing a petitioner to challenge portions of the County's Comprehensive Plan and

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[16] Official Zoning Map Thurston County, Washington, AR 23 p. 001752.

Development Regulations that the County failed to revise, undermining the state's policy of finality in land use decisions and creating incentives for property owners to develop prematurely. As we will see, each of these arguments fail.

RCW 36.70A.130(1)(a) provides in relevant part:

> Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section.

RCW 36.70A.130(4)(a) set a December 1, 2004 deadline for Thurston County to update its plan and certain development regulations for its first "periodic update." For Thurston County and other large and fast growing counties the "periodic updates" are required every seven years.[17] For smaller counties and cities the update interval is every ten years.[18] In addition, all counties must review their urban growth areas at least once every ten years.[19]

Both the Board and the Court of Appeals correctly held that Futurewise had appealed Thurston County's 2004 decision on what comprehensive plan provisions and development regulations to review

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[17] RCW 36.70A.130(4).
[18] RCW 36.70A.130(5)(b); (c).
[19] RCW 36.70A.130(3)(a).

and revise, not the earlier decisions on its comprehensive plan.[20] And Futurewise's appeal was filed within 60 days of the county's notice that it adopted the 2004 periodic review.[21] Included in Futurewise' issues were claims that the County failed to review and revise portions of its plan and regulations, and that those portions were out of compliance with the GMA.

The Board and the Court of Appeals correctly held that RCW 36.70A.130(1)(a) required Thurston County to review and if necessary revise its comprehensive plan and development regulations including amendments to the GMA adopted since the comprehensive plan and development regulations were adopted.[22] This reasoning is consistent with established precedent and well-founded: the law and factual circumstances both change over time, and the GMA thus correctly allows challenges to comprehensive plans not updated to reflect changed circumstances. For example, both the Board and Court "noted that the

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[20] *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___ Wn. App. ___, 154 P.3d 959, 967 (2007); *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002 Order on Motion for Reconsideration p. *3 of 8 (August 11, 2005), AR 42, p. 002601.

[21] *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002 Order on Motions to Dismiss p. *6 of 9 (April 21, 2005), AR 14, pp. 000323.

[22] *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002 Final Decision and Order p. *10 of 37 (July 20, 2005), AR 39 p. 002548 hereinafter FDO; *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___ Wn. App. ___, 154 P.3d 959, 965 – 66 (2007).

County had enacted its comprehensive plan before the 1997 amendments to the Act added requirements for limited areas of more intensive rural development and that Futurewise was challenging this component of the plan."[23]

Also, as the Court of Appeals reasoned if citizens and property owners cannot challenge un-amended provisions of the comprehensive plan, the "County could avoid complying with the Act by showing that it had adopted its plan before the" GMA requirement was adopted.[24] This is especially important given that the GMA has been amended every year since it was adopted.

The Court of Appeals also recognized that:

> while finality in land use decisions is important, by requiring review of comprehensive land use plans and development regulations every seven years, the legislature has determined that, in managing growth, the benefits to the public of keeping abreast of changes in the law outweigh the benefits of finality to landowners. In the purpose statement for an amendment authorizing more time for counties to complete updates, the legislature recognized that the update requirement involves significant compliance efforts by local governments, but added that it is "an acknowledgement of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its

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[23] *Id.*
[24] *Id.*

> citizenry." H.B. 2171, 59TH LEG., Reg. Sess. § 1 (Wash.2005).[25]

This conclusion is consistent with the Supreme Court's long held view that changing conditions require counties and cities to periodically review their comprehensive plans and zoning regulations.[26]

Thurston County's finality of land use decision arguments fail for two additional reasons. First, the only authority cited by the county, *Skamania County v. Columbia River Gorge Com'n*, dealt with the Gorge Commission's authority to conduct enforcement actions against a county approved permit for a house, barn, and outbuildings.[27] Here we are not dealing with building permits, but the review and revision of a comprehensive plan and development regulations. In Washington State the adoption of comprehensive plans and development regulations do not confer a vested right against their amendment.[28]

Second, Thurston County's argument that the ability of citizens to file failure to review and revise appeals every seven or ten years will lead property owners to prematurely develop their land is misplaced.

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[25] *Id.*
[26] *Bishop v. Town of Houghton*, 69 Wn.2d 786, 792, 420 P.2d 368, 372 (1967).
[27] *Skamania County v. Columbia River Gorge Com'n*, 144 Wn.2d 30, 35 – 40, 26 P.3d 241, 243 – 46 (2001).
[28] *Mayer Built Homes, Inc. v. Town of Steilacoom*, 17 Wn. App. 558, 565 – 66, 564 P.2d 1170, 1174 – 75 (1977); *Donwood, Inc. v. Spokane County*, 90 Wn. App. 389, 397 – 98, 957 P.2d 775, 779 – 80 (1998).

Thurston County writes that it reviews and if needed amends its comprehensive plan every year.[29] So a property owner's comprehensive plan designation, including whether the land is within the urban growth area, can change every year. But periodic updates occur only once every seven years. If Thurston County wants to increase regulatory certainty it should update its comprehensive plan to comply with the GMA so property owners can rely on it and reconsider whether the county should review and amend its comprehensive plan every year.

### 2. The Board and Court of Appeals presumed that the Thurston County's comprehensive plan was valid, required Futurewise to show the urban growth areas did not comply with the GMA, and deferred to the county's decisions if they complied with the GMA. (Thurston County Issues 2 & 3)

On pages 13 and 14 of its petition, Thurston County argues that its decisions under the GMA are entitled to deference. Futurewise agrees, but "this deference ends when it is shown that a county's actions are in fact a 'clearly erroneous' application of the GMA ...."[30] Thurston County, on pages 17 and 18 of its petition, argues that deference only ends "where a local enactment violates a 'specific statutory mandate[]'"

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[29] Thurston County Petition for Discretionary Review p. 4 (May 2, 2007).
[30] *Quadrant Corp. v. State Growth Management Hearings Bd.*, 154 Wn.2d 224, 238, 110 P.3d 1132, 1139 (2005).

based on footnote 8 of the *Quadrant Corp.* decision. While all of the violations found by the Board and Court of Appeals in this appeal are violations of specific statutory provisions, Thurston County's argument is also contrary to the holding in *Quadrant Corp.* As the Supreme Court wrote: "In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general."[31]

On page 14 of its petition Thurston County argues that the Court of Appeals required Thurston County to "justify its minor modifications of its UGA rather than recognizing that the modifications were presumed valid and that the burden" was on Futurewise to show the urban growth area was noncompliant with the GMA requirements. But Futurewise met its burden. We showed the Board that Thurston County's urban growth areas were oversized.[32] Based on our arguments and evidence the Board correctly found that:

> 26. The County's allocation of residential urban lands (18,789 acres) exceeds its projected 2025 demand for such lands (11,582 acres) by 7,205 acres.

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[31] *Id.* (emphasis added).
[32] AR 16, pp. 000351 – 000353; FDO p. *18 of 37, p. *21 of 37, AR 39 p. 002556, p. 002559.

27. Nowhere in the County's comprehensive plan is it indicated that a 38 percent market factor was utilized to increase the amount of acreage that is needed to accommodate projected urban residential growth.

...

29. The comprehensive plan does not include an explanation or justification for the use of a land supply market factor.[33]

The Court of Appeals summarized these findings of fact and ruled that since neither Thurston County nor the Building Industry Intervenors assigned error to these findings of fact they are verities on appeal.[34] Further, Thurston County told the Board at the hearing on the merits that it had not used a market factor. The Growth Board and Court both properly held that Thurston County's urban growth area violated the requirements in RCW 36.70A.110. And both the Court of Appeals and the Growth Board relied on *Diehl v. Mason County*, a Court of Appeals decision that has been settled law in Washington State for over eight years.[35]

### 3. The GMA excludes natural resource lands from the rural element, consequently the county cannot use the natural resource lands densities to comply with the GMA's

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[33] FDO pp. *33 – 34 of 37, AR 39 pp. 002571 – 72.
[34] *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___Wn. App. ___, 154 P.3d 959, 970 (2007).
[35] *Id.*; FDO p. *23 of 37, AR 39 pp. 002571 – 72; *Diehl v. Mason County*, 94 Wn. App. 645, 654, 972 P.2d 543, 547 (1999).

**requirement for a variety of rural densities. (Thurston County Issue 4)**

Thurston County, on pages 15 through 16 of its petition, argues that its rural element provides for a variety of rural densities because it includes lands designated for agriculture, forest and mineral resources. Here the county's first error is stating on page 14 of its petition that this is an issue of first impression. It is not. Four other published Court of Appeals decisions have reached the same conclusion as the decision Thurston County seeks to appeal in this case, that natural resource lands are not included in the rural area.[36] Certainly the Supreme Court does not need to weight in on this unanimity.

Thurston County's second error is in reasoning. RCW 36.70A.070(5) provides in relevant part that: "Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources." The county argues that by using the word "including" RCW 36.70A.070(5) give the county the

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[36] *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___ Wn. App. ___, 154 P.3d 959, 971 (2007); *Diehl v. Mason County*, 94 Wn. App. 645, 655, 972 P.2d 543, 548 (1999); *Clark County Natural Resources Council v. Clark County Citizens United, Inc.*, 94 Wn. App. 670, 672, 972 P.2d 941, 942 (1999) *review denied by Clark County Citizens United, Inc. v. Clark County Natural Resources Council*, 139 Wn.2d 1002, 989 P.2d 1136 (1999); *Whidbey Environmental Action Network v. Island County*, 122 Wn. App. 156, 166, 93 P.3d 885, 890 (2004) *review denied by Whidbey Environmental Action Network v. Island County*, 153 Wn.2d 1025, 110 P.3d 756 (2005); *Clallam County v. Western Washington Growth Management Hearings Bd.*, 130 Wn. App. 127, 140, 121 P.3d 764, 771 (2005).

discretion to include in the rural element both lands that are not designated for urban growth, agriculture, forest, or mineral resources and lands that are designated for those purposes.[37]

The county's reading is based on the definition of "including" as "'the containment of something as a constituent, component, or subordinate part of a larger whole.'"[38] But this is actually the second meaning of include.[39] The first and only meaning of "including" in *Webster's Third New International Dictionary* is "serving to enclose or cover."[40] Applying this meaning we see that the legislature created a closed list. The legislature only authorized Thurston County to place in the rural element "lands that are not designated for urban growth, agriculture, forest, or mineral resources."

This is also consistent with other provisions of the Growth Management Act.

> The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent and purpose. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004); *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). This is done by considering the statute as a whole, giving effect to all that the legislature has said, and by using related statutes to

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[37] Thurston County Petition for Discretionary Review p. 15 (May 2, 2007).
[38] *Id.*
[39] *Webster's Third New International Dictionary* p. 1143 (2002).
[40] *Id.*

> help identify the legislative intent embodied in the provision in question. *Campbell & Gwinn*, 146 Wn.2d at 11, 43 P.3d 4.[41]

RCW 36.70A.030(16) defines:

> "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

In addition RCW 36.70A.070(5)(b) provides in part that:

> (b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses.

Reading all of this together, designated natural resource lands and many of their uses are not to be included in the rural element. Rural development does not include uses found in "agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170." RCW 36.70A.070(5)(b) provides that "[t]he rural element shall permit rural development, forestry, and agriculture in rural areas." But these are not

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[41] *Department of Labor and Industries v. Gongyin*, 154 Wn.2d 38, 44 – 45, 109 P.3d 816, 819 (2005).

the lands designated under RCW 36.70A.170. Finally, RCW 36.70A.070(5)(b) provides that "[t]he rural element shall provide for a variety of rural densities ..."

Reading all of this together we see that the natural resource lands designated under RCW 36.70A.170 are not part of the rural area and they are also not part of "rural densities." As both the Board and the Court of Appeals concluded, the legislature provided that a county cannot use natural resource lands designated under RCW 36.70A.170 to provide the required variety of rural densities.

In short, we see that Thurston County's petition does not involve an issue of substantial public interest that should be determined by the Supreme Court. Rather, like the five Court of Appeals decisions concluding that natural resource lands are not included in the rural area, the issues raised by the county either lack the merit to make them issues of substantial public interest or the issues have already been resolved by published appellate decisions.

### B. The Court of Appeal's *Thurston County* decision does not conflict with the decisions of the Supreme Court. (Thurston County Issues 1, 2, 3, & 4)

On pages 16 through 19 of its petition, Thurston County argues that the Court of Appeals decision conflicts with several Washington

State Supreme Court decisions. As we will see, the Court of Appeals decision does not conflict with any Supreme Court decision.

First, the *Thurston County* decision is consistent with the Supreme Court's *Skagit Surveyors* decision. In that case the Supreme Court concluded that:

> The language of this statutory section authorizes a hearings board to determine whether actions-or failures to act-on the part of a county comply with the requirements of the Growth Management Act.[42]

RCW 36.70A.130(7), part of the section that requires Thurston County to review and if needed revise its comprehensive plan and development regulations, specifically provides that "[t]he requirements imposed on counties and cities under this section shall be considered 'requirements of this chapter' ...." The Court of Appeals concluded that the Board had authority to review Futurewise's petition for review alleging that Thurston County's actions and failures to act as to this required periodic update violated the Growth Management Act.[43] This is consistent with the *Skagit Surveyors* decision. This is especially true since the *Thurston County* case concerns a comprehensive plan and development

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[42] *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 – 59, 958 P.2d 962, 970 (1998).
[43] *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___ Wn. App. ___, 154 P.3d 959, 965 – 66 (2007).

regulations adopted under the GMA,[44] not the pre-GMA enactments at issue in the *Skagit Surveyors* case.[45]

The County then claims that the Board failed to defer to the county's policy choices unless they comply with GMA requirements.[46] But this is what *Quadrant Corp.* in part commands. "In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general."[47]

The county contends that the Board did not defer to the county's decisions related to UGA sizing and variety of rural densities.[48] But the GMA contains many specific requirements for urban growth area sizing and rural densities; the Board correctly ruled that deference does not extend to allowing the County to ignore the specific requirements of the GMA. UGA size must be "based upon" the range of population projections made by the Washington State Office of Financial Management and "sufficient to permit" the projected urban growth; the UGA may include "a reasonable land market supply factor ...."; and

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[44] Thurston County Petition for Discretionary Review p. 3 & p. 7 (May 2, 2007).
[45] *Skagit Surveyors*, 135 Wn.2d at 568, 958 P.2d at 975.
[46] Thurston County Petition for Discretionary Review p. 3 & p. 7 (May 2, 2007).
[47] *Quadrant Corp.*, 154 Wn.2d at 238, 110 P.3d at 1139 (emphasis added).
[48] Thurston County Petition for Discretionary Review p. 19 (May 2, 2007).

"[n]ew fully contained communities may be approved outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities ...."[49] The Board found that Thurston County's urban growth area exceeded the land sufficient to accommodate the adopted population projection, 11,582 acres, by 7,205 acres and the county did not incorporate a market factor.[50] Neither Thurston County nor the Building Industry Intervenors assigned error to these findings of fact and they are verities on appeal.[51] This large oversupply violates the goals and requirements of the GMA.

On a variety of rural densities, Thurston County told the Board that rural zones with densities greater than one dwelling per five acres did not comply with the GMA.[52] So the only GMA compliant rural zones had densities of one dwelling unit per five acres.[53] One rural density is not the variety of rural densities which the GMA specifically requires.[54]

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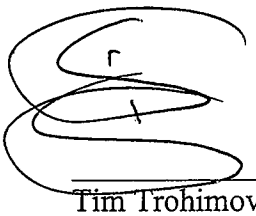
[49] RCW 36.70A.110(2); RCW 36.70A.350(2); RCW 36.70A.350(2).
[50] FDO pp. *33 – 34, AR 39 pp. 002571 – 72.
[51] *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___Wn. App. ___, 154 P.3d 959, 970 (2007).
[52] *Id.* at 972.
[53] *Id.*
[54] RCW 36.70A.070(5)(b)

## IV. Conclusion

Thurston County has the burden to show that the Supreme Court should hear this discretionary appeal. As we have seen, all of the county's arguments fail. Further, the facts of this appeal are so specific and intertwined with the Board and Court of Appeals decisions that a decision on the issues which the county has raised would provide little guidance to other counties and cities. The Supreme Court, as it did the first time, should decide not to hear this appeal.

Respectfully submitted May 30, 2007



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Attorney for Futurewise, Respondent

Appendix 1:

***Thurston County v. Western Washington Growth Management Hearings Board and 1000 Friends of Washington*, No. 78148-6 (C/A No. 34172-7-II) Order (Department I of the Supreme Court of Washington: September 6, 2006)**

# THE SUPREME COURT OF WASHINGTON

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| THURSTON COUNTY,<br><br>Appellant,<br>v.<br><br>WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD and 1000 FRIENDS OF WASHINGTON,<br><br>Respondents,<br>and<br><br>BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, OLYMPIA MASTER BUILDERS, and PEOPLE FOR RESPONSIBLE ENVIRONMENTAL POLICIES,<br><br>Appellant-Intervenors. | NO. 78148-6<br><br>**ORDER**<br><br>C/A NO. 34172-7-II<br><br>Thurston County<br>No. 05-2-01833-7 |



Department I of the Court, composed of Chief Justice Alexander and Justices C. Johnson, Sanders, Chambers and Fairhurst, considered this matter at its September 6, 2006, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Motion to Dismiss is denied and this case is transferred to Division II of the Court of Appeals.

DATED at Olympia, Washington this 6th day of September, 2006.

For the Court

Jerry L. Alexander
CHIEF JUSTICE

497/139

Supreme Court No. 80115-1

**THE SUPREME COURT**
**OF THE STATE OF WASHINGTON**

THURSTON COUNTY,
Petitioner,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD and FUTUREWISE
(formerly known as 1000 Friends of Washington),
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&

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, OLYMPIA MASTER BUILDERS, and PEOPLE FOR RESPONSIBLE ENVIRONMENTAL POLICIES,
Petitioner-Intervenors.

# CERTIFICATE OF SERVICE FUTUREWISE'S ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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TIM TROHIMOVICH declares as follows:

On the date set forth below I caused to be served the following documents upon the individuals or entities set forth herein and in the manner specified for each such individual and/or entity: **Futurewise's Answer to Thurston County's Petition For Discretionary Review.**

| | |
|---|---|
| The Supreme Court<br>State of Washington<br>Temple of Justice<br>415 – 12th Ave S.W.<br>PO Box 40929<br>Olympia, Washington 98504-0929<br>Original and copy | By United States Mail prepaid and properly addressed and electronic filing. |
| Mr. Jeffrey G. Fancher<br>Deputy Prosecuting Attorneys<br>Honorable Edward G. Holm<br>Prosecuting Attorney<br>Civil Division<br>2424 Evergreen Park Dr. SW, Suite 102<br>Olympia, Washington 98502-6041 | By United States Mail prepaid and properly addressed & e-mail. |
| Mr. Richard L. Settle<br>Foster Pepper PLLC<br>1111 Third Avenue, Suite 3400<br>Seattle, Washington 98101-3299<br>Special Deputy Prosecuting Attorney for Thurston County | By United States Mail prepaid and properly addressed & e-mail. |

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| Ms. Martha P. Lantz<br>Assistant Attorney General<br>Licensing & Administrative Law Division<br>1125 Washington Street<br>PO Box 40110<br>Olympia, Washington 98504-0110<br>Attorney for the Western Washington Growth Management Hearings Board | By United States Mail prepaid and properly addressed & e-mail. |
| Mr. Brian Trevor Hodges<br>Pacific Legal Foundation<br>10940 NE 33rd Place, Suite 210<br>Bellevue, Washington 98004-1432 | By United States Mail prepaid and properly addressed & e-mail. |

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington, on May 30, 2007.

Tim Trohimovich
Attorney for Futurewise